UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

In Re:	)	Docket No. 3:17-BK-3283(LTS)
	)	
	)	Title III
The Financial Oversight and Management Board for Puerto Rico,	)	
	)	(Jointly Administered)
as representative of	)	
The Commonwealth of Puerto Rico, *et al.*,	)	December 19, 2018
Debtors.	)	

OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For The Commonwealth of Puerto Rico, et al.:	Mr. Martin Bienenstock, PHV Mr. Brian Rosen, PHV Mr. Hermann Bauer, Esq.
For the U.S. Trustee Region 21:	Ms. Monsita Lecaroz Arribas, AUST
For Official Committee of Unsecured Creditors:	Mr. Luc Despins, PHV Mr. Juan Casillas Ayala, Esq.
For Puerto Rico Fiscal Agency and Financial Advisory Authority:	Mr. Peter Friedman, PHV Mr. Luis Marini Biaggi, Esq. Ms. Carolina Velaz Rivero, Esq.

APPEARANCES, Continued:

Fee Examiner:	Mr. Brady Williamson, PHV Ms. Katherine Stadler, PHV
For COFINA Senior Bondholders' Coalition:	Mr. Susheel Kirpalani, PHV Appearing in New York Mr. Daniel Salinas, PHV
For Bank of New York Mellon:	Mr. Albeniz Couret Fuentes, Esq. Mr. C. Neil Gray, PHV Appearing in New York Mr. Luke Sizemore, PHV Appearing in New York
For the Retiree Committee:	Mr. Antonio Juan Bennazar, Esq. Mr. Hector Mayol, Esq.
For AMPR:	Mr. Jose Luis Barrios, Esq.

Proceedings recorded by stenography. Transcript produced by CAT.

I N D E X

San Juan, Puerto Rico

December 19, 2018

At or about 9:33 AM

* * *

THE COURT: Again, buenos dias. Welcome to counsel, parties in interest and members of the public and press here in San Juan, those observing here and in New York, and telephonic participants. It is a beautiful week in San Juan and it is always good to be back in Puerto Rico.

My usual instructions about electronic equipment. I remind you, consistent with Court and Judicial Conference policies and the Orders that have been issued, there is to be no use of any electronic devices in the courtroom to communicate with any person, source or outside repository of information, nor to record any part of the proceedings.

Thus, all electronic devices must be turned off unless you are using a particular device to take notes or to refer to notes or documents that are already loaded on the device; and all audible signals, including vibration features, must be turned off. No one is permitted to record or retransmit any part of the hearing, and anyone who's observed violating these rules is subject to sanctions.

Thank you for your compliance with these procedures. It is now time to begin our agenda with the status report from the Oversight Board.

Mr. Bienenstock, good morning.

MR. BIENENSTOCK: Good morning, Your Honor. Martin Bienenstock of Proskauer Rose for the Oversight Board, for itself and as Title III representative.

Your Honor, the Court has directed a status report on the general status of the negotiation and formulation of additional plans of adjustment, as well as the anticipated timeline for the filing and confirmation of the plans.

As the Court knows, this is not a simple issue, but I'm going to break it down and try to identify the main components as they exist now.

As the Court knows, the GDB Title VI has been done, and that involved about five billion dollars of debt. And COFINA's approximate 16 billion dollars -- or 17 billion dollars of debt is scheduled for confirmation hearing on January 16, 2019.

Negotiations about a PREPA RSA with some of the key creditors are underway, with PREPA having over nine billion dollars of debt, and the Board looks forward to resuming mediation on a Commonwealth plan.

The Board is doing a lot of work to be ready for the mediation. There will likely be some issues teed up soon, Your Honor, for which we know there is no likely consensus, at least in the near term, such as whether the PBA leases are leases for purposes of Bankruptcy Code Section 365(d)(3), and

possibly claim challenges emanating from or related to the Kobre Kim report.

We should likely know in the March or April time frame how much consensus there is on a Commonwealth Title III plan. If there is a lot of consensus, we would file a Plan and Disclosure Statement, which is being worked on now, and ask for a confirmation hearing as soon as practicable. But if there is little consensus, the Board will have to determine whether a cramdown plan should be filed and its likely timeline.

The reasons for lack of consensus will be relevant. If they are purely legal differences, we may want to try to tee them up for resolution to eliminate the obstacles to further negotiation and consensus. We would obviously have to do so in a manner that would not make the rulings advisory opinions.

If the reasons for lack of consensus on a Commonwealth plan are largely economic, that, for instance, the Oversight Board simply doesn't see as much ability to pay debt as the creditors, then a cramdown plan may make sense, because the economics may not change for the better. We hope they do, but there would be no reason to bet on that, except if the Commonwealth makes certain changes, such as repealing Law 80 to allow for employment at will. That would create a tide lifting all boats. People would be better off, and there

would be some fallout that would make creditor returns better as well. But primarily, it would be best for the economy going forward.

Discussions also continue on non-Title III situations such as PRASA, University of Puerto Rico and other non-Title III situations.

Your Honor, I know I wasn't very specific, but I do think that based on the items to be teed up in the near term, the mediation to continue, that in the March-April time frame, we'll be able to give Your Honor a much better, more specific timeline to actual confirmation hearings.

THE COURT: Well, I'm grateful for the information that you have shared today. I think it's important that we inform the general public insofar as it is possible, in as current a fashion as possible, since there are so many constituencies that are so deeply involved in and concerned with the progress of these proceedings.

And so I hear you about March-April. Don't be surprised if I ask you to make another status report in January. And I thank you for as much candor as you are able to bring to each of these reports.

MR. BIENENSTOCK: Thank you, Your Honor.

THE COURT: Thank you.

MR. BIENENSTOCK: Shall I turn over the podium to the Fee Examiner now?

THE COURT: Yes.

The next item on the agenda is item Roman II.1, the Fee Examiner's Motion to Impose Additional Presumptive Standards, and that is docket entry 4370 in case 3283.

Good morning.

MS. STADLER: Good morning, Judge.

The Fee Examiner filed the Motion for Additional Presumptive Standards after the Court's imposition of an initial set of presumptive standards that we discussed at an earlier hearing.

Consistent with that approach, the goal of these presumptive standards is to put professionals and the public on notice of the standards that the Fee Examiner intends to apply when evaluating fee applications.

The Fee Examiner has been concerned since the outset of his engagement about the imposition of rate increases by law firms, hourly rate increases, not just because of their initial impact, but also because of their potential for exponentially increasing as the case goes on.

The impact of rate increases so far, we have calculated through the third interim fee period as close to four million dollars. That number will go up with the fourth interim fee applications which were just filed. And then of course we have a year end coming up, and that almost always, for law firms, means additional rate increases.

We have had extended discussions with professionals about the presumptive standards regarding rate increases and also with respect to expert witnesses, which is also a subject of the motion. But the primary discussion has been on the issue of rate increases.

And while no professional has objected to the motion, and we submitted a redline Revised Form of Order that addresses the concerns articulated by some professionals, it is not entirely accurate to say that the motion or the Order is uncontested, because there are professionals who still believe that there are provisions in there that are unfairly stated and will be unfairly applied to the law firms.

In particular, there's a continuing concern about the standards being advisory in nature. And again, the Fee Examiner's position is that there is no binding decision being asked of this Court until there's a fee application filed and an objection has been registered.

This is really just an attempt to give professionals an idea of what to expect in terms of the standards for reasonableness and what types of issues could flag an objection so that we can hopefully avoid the need for contested matters on fees, because that isn't a good use of anyone's resources.

Another issue that has been stated is that the motion improperly attempts to shift the burden of proof on the

reasonableness of fees, and the Fee Examiner disagrees with that assertion. The burden is always, under the Bankruptcy Code, on a professional fee applicant to establish the reasonableness of his or her fees, and that remains whether there are presumptive standards imposed or not.

Again, these guidelines are merely there to provide parameters for professionals to follow. The Fee Examiner struggled with the issue of rate increases and considered the possibility that an absolute prohibition on them might be appropriate in this case. After evaluating the fee applications here, speaking to professionals, doing significant analysis of the billing data of the professionals, he concluded that it would be more reasonable to allow some level of rate increases to provide a ceiling, not a floor, for rate increases to hopefully eliminate the need to have to talk about this issue in the future.

It has been his experience that merely telling professionals there's a concern and waiting until the end of a case to calculate the impact and then discuss what to do about it has been an ineffective way of dealing with this issue. So the Fee Examiner has tried to get ahead of it, to file this motion to put everyone on notice about the standards that will be applied, and to hopefully minimize conflict on that issue.

We hope that this does not provide an incentive for professionals to raise rates if they otherwise would not. We

trust that the professionals will follow their professional ethics guidelines and other limitations on their ability to adjust fees, and that they will keep in mind the significance of these proceedings to the overall economy in Puerto Rico before imposing any rate increases.

So the intent is not to open the door for a free-for-all in rate increases; rather, to provide a presumptive limit on how high they can go.

THE COURT: Well, I thank you for the presentation and for the summary. And it won't surprise anyone here that the concerns of the Fee Examiner are deep concerns of the Court, and so I was pleased when the motion was brought forward initially.

I have some concerns of my own about where things have come out, and I'd like to flag some issues here. And I will tell you that it is my intention to impose on you, and impose on everyone, to have another round of discussions based on some particular principles that I will flag now and bring back at the next Omni.

MS. STADLER: Certainly.

THE COURT: And so first, just for my own context, are there any particular circumstances that explain the 13.3 percent and 28 percent outlier increase rates that were flagged in the report that I should understand?

MS. STADLER: Not any circumstances that are unusual

when addressing this issue with law firms. The applicant that had those outlying rates has not been recommended for consensual approval today. It is one of the applications that has been held over.

Several of the applications have that issue, and that's why you see a number of them not on the list of recommended applications for approval for the third interim fee period.

In general, professionals assert that they apply their rate policies uniformly, that they charge the same to the clients in this case as they do in other cases, and that those percentages that you see are consistent with their practices in other cases, in other Chapter 11 cases. And they maintain that they are reasonable. There is not any particular extenuating circumstance that has been brought forward for those.

The Fee Examiner has always tried to acknowledge the realities of certain aspects of the private practice of law. For example, when an associate is promoted to partner or shareholder in a firm, that is frequently a time when we see a rate increase that's generally above the norm, and that seems to be standard practice and seems to be well-accepted by clients in Chapter 11 cases. And so those types of rate increases are actually carved out of the Fee Examiner's analysis.

So the percentages you see there are real percentages, and they're generally the result of a firm that has more than one increase in a year. That's how they -- they don't tend to say, oh, we're going to increase them 28 or 29 percent today. It's a cumulative thing that happens with a rate increase at the beginning of the year, mid year and end of the year.

And so that's another reason that the presumptive standards are designed to limit the adjustments to one per year, so that cumulative effect can be mitigated.

THE COURT: And I thank you for pointing me to the Lexis survey information about year-over-year partner increases. The cumulative, the compound annual growth rate in that survey of 4.2 percent as against the 2017 year-over-year 5.7 percent increase suggested to me that 2017 year was unusually high in relation to the preceding couple of years, and I just wanted to reality check my reading of that information.

MS. STADLER: Yes. I think that's accurate.

THE COURT: And is there any survey information of which you're aware on associate billing rates, particularly seniority step increases?

MS. STADLER: There are many publicly available resources that report on rates and rate increases. Very few of them are in a citable format, as we would consider it in

the Blue Book context for legal writing.

It is very difficult to carve out the issue of associate rate increases or seniority increases, because firms are not required to announce or distinguish what rate adjustments are based on seniority and what are based on adjustment or inflation or any other reason.

We can often identify them if we have sufficiently robust data. If we have enough associates from a given firm's billing time on the case from the beginning, so that we can track their rate increases and watch what the increases do and the time that they occur, we can often figure out what portion is based on seniority and what portion is not. But one of the primary concerns of the Fee Examiner is that it's difficult to distinguish.

There isn't a specific market benchmark for what is an appropriate associate rate increase. As there is, as you cited, the Lexis survey -- there isn't anything that carves out the specific issue of seniority.

What we do know is that general counsel, both in Chapter 11 cases and outside, have been resistant in recent years to professionals using their cases as training grounds for brand new associates. And there is some concern on the part of market participants that the starting rates of associates are already somewhat inflated, and that 20 and 30 percent increases per year above that are not reasonable. And

they're not something that clients in the private marketplace are willing to endure.

And all of that has gone into the Fee Examiner's consideration in determining what appropriate level of seniority based adjustment should be imposed.

THE COURT: And in general, what -- actually, I'll take that back. I want to ask that question in a different context.

You've indicated a concern that the initial discounts that were provided for in the original approvals will be eroded by increases, and I would just like you to take me a little bit deeper into the math.

So is this a concern, that the overall payments will creep up because the discounted pie is getting larger, or are you seeing people calculate the discount based on the uninflated rates only, if that makes sense?

MS. STADLER: I'm not sure I understand the question, Your Honor. I'm sorry.

THE COURT: All right. So why don't I just ask you, what sorts of computations underlie that concern?

MS. STADLER: Well, as you know, every professional in this case was asked to provide a discount off their standard billing rates. Most did so, but there has not been a uniform approach to that.

There also has not been a uniform approach to how the

discounts will be calculated and applied prospectively. And there wasn't any corresponding limitation on rate increases.

So the concern, and this is observed in at least a couple of cases in the application materials the Fee Examiner has reviewed so far, is that a stated discount at the beginning of the case which would, on its face, appear to offer savings, would quickly be recouped through the subsequent and perhaps more frequent than usual rate increases. So that within a short period of time, while the initial rate discount was real and genuine as of the date of the professional's engagement, that a series of successive rate increases more frequently than annually, and at rates higher than the industry norms, have the impact of erasing any savings that would have been incurred through the discount process.

So that's the best I can do to articulate that. We have, you know, calculated what the savings are from the rate increases, what the cost of -- or what the savings are from the discounts versus the cost of the rate increases, and in some professional instances, one has surpassed the other. In other instances, it hasn't.

Depending on how long the case goes on, it's probably true that most discounts will ultimately be overtaken by subsequent rate increases, but the idea is to make sure that the discount is real and absolute off an appropriate market

rate at the time it's charged, rather than being an artificial discount that is then marked up in another context.

THE COURT: And so I take it that, among other things, you're not seeing a -- if there were a 20 percent discount agreed in the first instance on, just for simplicity, a 100 dollar an hour rate, if that rate is increased to 110 percent, the 20 percent discount multiplier is not being directly applied to the 110 dollar rate?

MS. STADLER: No, I think that they are, although, again, there's an important caveat, which is everyone is doing this a little bit differently. Some firms will calculate their entire fee application based on their stated standard rates and then do a below the line deduction, so it's really easy to see, this is the discount we're offering off the total price.

Others, I think more commonly in this case, have adjusted people's hourly rates so that an individual attorney's hourly rate will be ten or 15 or 20 percent lower than it ordinarily would be.

And then there are some professionals in this case that have stated a discount amount, but that will be applied at the end of the case in the discretion of the professional. So it's really impossible to know, until the professional exercises that discretion, how the discount will be applied, which fees will be subject to the discount, you know, whether

the discount will be off the total amount of fees that have been determined to be reasonable by the Court or the gross amount charged.

So it's very difficult to answer that question with precision; but I think in most instances, professionals are increasing the rates that they would charge on a market basis, and then discounting them in the same amount that they had indicated they would do so in the beginning of the case.

THE COURT: Would it be helpful to have, as a standard element of interim fee applications, a uniform display or table that would illustrate the dollar impact of the discount on the market rate fees in a uniform format each time so that you can have some sense of comparability, and as to the one that has the unusual arrangement, still have that illustrative dollar amount as a benchmark?

MS. STADLER: Right. Yes and no. We do that calculation. We have done that from the outset when we can. Some professionals disclose it and we verify it. Other professionals don't.

And when we issue our voluminous letter reports to the professionals, which are of course confidential in the nature of settlement communications, there's almost always an exhibit that shows, you know, our calculation, the Fee Examiner's calculation of what the discounted rate's or the overall discount's impact has been on the fees.

So that the Fee Examiner is always keeping in mind, when making determinations about what fees should be subject to a potential objection, he's cognizant of the fact that there has been a discount, that there's already some impact on the professional from that discount. And so he's taking that into consideration, at the same time, concluding that in the context of this case, the firms -- the fees still have to be reasonable, the activities undertaken still have to be reasonable.

There are, of course, many more components to a reasonableness analysis than just the hourly rate. So we do that, I think, for the professionals for whom that calculation is difficult. It is difficult for us, as it is for them. I don't know that there's a way to mitigate that other than changing the way the discount is calculated.

And I'm not -- that would probably require reexamination of some of the retention agreements, and I don't know if that's something that the Court is interested in pursuing or not. I think it's probably more cost effective for us to continue calculating it, because we now have a reporting format set up for it, and we can generate that as a matter of course with our initial set of exhibits and data reporting.

If the professionals were required to provide the disclosure, we would still verify it, so I don't think it

would hurt, but I don't think that that type of a requirement would add something that's missing from our analysis already.

THE COURT: All right. Well, I defer to you on efficiency. I don't want to make anything more complicated than it needs to be.

My concern was, first of all, that it was being done somewhere, but frankly, also that through this interim review process, when we get to the final retrospective determination, there is some set of benchmark numbers that both the Fee Examiner and the professionals own at a level of significance so that I'm not dealing with people who are, you know, some working in Ukrainian and some people working in French --

MS. STADLER: Yeah. Right. Right.

THE COURT: -- as to what the right benchmarks ought to be.

MS. STADLER: Right. And that's part of the reason that the Fee Examiner has tracked this from the very beginning.

I'd also like to note for Your Honor that we have the ability to include, in our reporting to the Court, any information that would be useful to the Court in conducting its own reasonableness analysis. As I said, we produce voluminous reports and exhibits to professionals. Everyone here who's filed a fee application knows what I'm talking about, and they probably roll their eyes when it arrives,

because it tends to be very detailed and complete and, you know, a line-by-line flagging of issues.

Any data that's available from that reporting or elsewhere in our process can easily be turned into a summary for the Court with or without designating firm information. We could do it on an average basis. We could do, you know, gross amount of savings from discounts compared to gross amount of impact from rate increases during a given time period. We could carve out associates. We could include associates. We could apply different rates. Because we require the submission of all of the fee applications supporting material in electronic format, we can really provide a great deal of granularity for anyone who's interested in it.

The Fee Examiner includes in his reports to the Court enough information we hope for the Court to make its reasonableness analysis without inundating anyone with too much detail. But to the extent that that sort of information would be helpful, either on an interim reporting or final reporting basis, we absolutely can provide it.

And so we're interested in hearing the Court's feedback on, you know, the additional revisions to this particular presumptive standards Order that the Court would like to see, but prospectively, we're also very happy to accommodate any other requests for information or imposition

of a standard that we haven't contemplated or articulated to the Court.

THE COURT: Well, I'm grateful for your confirmation that the detailed information is both available to me and fairly easily accessible. Given my limited resources and the many demands on my attention here, I am very grateful for the expertise and experiential context of the Fee Examiner. And the Fee Examiner's expertise and analysis in negotiating, and reviewing negotiating and coming to recommendations, are very meaningful to me as review on behalf of the Court in this interim process.

I think I may well ask you for a more granular presentation toward the end, but one reason that I've engaged with you in these -- the development of these presumptions and have made requests for consideration is that in order for me to be able to be confident of the interim recommendations, I need to have a good understanding of what the process is and what the benchmarks are that are being applied by the Fee Examiner in discussions with the professionals that lead to those recommendations.

Being confident of the Fee Examiner and confident of the benchmarks, I don't have a need to see the math every time, because I know what's going on.

MS. STADLER: Okay. Thank you, Judge. I appreciate that.

THE COURT: And so turning to the question of percentage increases, I am concerned about the, I'll call it inflationary component of that, the nonseniority component. I'm concerned about the seniority component as well, but you've confirmed to me it's difficult to identify benchmarks.

So I think we ought to know, we ought to be able to disaggregate the seniority component, but for today, I particularly want to focus on the inflationary component, because it seems to me that given the unprecedented unusual nature of these cases, their breadth and the breadth of demands on the resources of the Commonwealth on the one hand, on the other hand, the unique professional experience and, frankly, prestige that is associated with working on these issues in this distinguished company of professionals is something that is of value in the mix for professionals working here.

And so I would like to see, I'll just put it that way, I'll be flat out with you, a presumptive ceiling of the -- equal to the annual rate of inflation in the New York metropolitan area, which is two percent according to the charts that were cited in the Fee Examiner's report, rather than five percent.

And I recognize -- I'm not asking that a firm limit all of its billing increases to two percent. But I think this is a unique situation, and there are, as you know, concerns

within, concerns without, and a -- and this island is a living organism that has to go on and live afterwards, that has to be able to allocate and distribute resources that are not going to be increased, absent some miracle that I don't foresee at this point, and that the projections don't identify for us.

And so I am concerned at every level with the proper husbanding, to use a sort of antiquated term, of resources. And there is sacrifice necessary all around, but I also understand that there are inflationary pressures on all of us. There is a real discernible rate of inflation, and there is value that comes from participating in these experiences that goes beyond the dollars that come in. And so I would like the Fee Examiner to consider this and to discuss it with professionals. And I would like to see it in a revised version of the motion.

And if there's opposition to the motion, there's opposition to the motion on the presumptions, I'll take that up and we'll talk about it in open court. But that is a real concern for me.

MS. STADLER: We will do so, Your Honor.

THE COURT: Thank you. And I would also like to see seniority rate increases accompanied in the application by a representation that the increase is consistent with the firm-wide proportions for whatever the given period is so that there is -- there is something, there's a representation made

as officers of the Court by the firm, and that figure, disaggregate it.

Turning to the disclosure element of the increase mechanism. The revised proposal carves out professionals retained by AAFAF and the Oversight Board on the principle that that information is publicly available and has been negotiated. It may very well be publicly available here on the island. It's not easily available to me. And so I would prefer to see even those professionals required to file updated information with the Court in advance of the rate increases for the benefit of the Court and the benefit of the public.

And similarly, the retention related disclosures as to other professionals, even if there's an exemption from the Section 327 related template that you've proposed for the nongovernmental body professionals, having some documentation on file with the Court in the publicly available ECF system will be helpful to the Court and to greater public understanding and acceptance, I believe, of this process and the significance of the expense of this process for Puerto Rico.

Would it make sense, again, just in terms of overall cost containment goals, to seek to identify certain types of work that might presumptively be expected to be performed by local counsel at the significantly different billing rates

than by mainland counsel?

MS. STADLER: I think so. I think a lot of the firms are doing that of their own volition. There certainly are things that come to mind. I think we've seen a lot of lift stay motions, and some of those are being handled by the local counsel. Claims objections, I believe, are or will be primarily handled locally.

So we could certainly come up with some suggestion as to types of routine commodity work in bankruptcy that should be performed by local professionals. The challenge with that is every law firm has a different way of operating in conjunction with their local counsel.

Some law firms are very happy to hand things off to their very competent local professionals and feel no need to step in or supervise or oversee. Other firms feel strongly that they are still making representations to the Court when documents are signed and filed through pro hoc vice admission or otherwise, and feel that they, in order to fulfill their professional responsibility obligations to the clients and to the Court, need to be aware in some sense of what's happening with matters that have been delegated to local counsel or efficiency counsel.

We'll have to deal with that, but I do think that laying out a couple of areas that we think might make sense for that to be something to encourage people to do, I think

that that's a fine idea. And it shouldn't be difficult to articulate those areas, keeping in mind that obviously the application of those requirements has to be fact specific --

THE COURT: Yes.

MS. STADLER: -- case specific, firm specific, as our inquiries always are.

THE COURT: And I understand that particular pockets of expertise may well differ people to people, firm to firm, but to have a general benchmark, again, common understanding of the sorts of work that might properly be expected to be done by local counsel would be helpful to the Court and I think helpful overall to the process. So thank you for undertaking to explore that.

So I would like to turn to the subretained professionals issue.

MS. STADLER: Yes.

THE COURT: And I noticed in the revised Order that the restrictions and disclosure requirements and client consent requirements seem to be proposed only prospectively and only for new retentions, which it seems to me would diminish very substantially the impact of the new presumptive standard and the information that will be available to the Court.

And so what -- if I'm right about the way that that was intended to operate, I'll say what I would like to see is

to have, even for already retained, subretained professionals, a benchmark disclosure and confirmation of client consent as a baseline. And then going forward, disclosure and client consent for any new retentions, changes in fees going forward.

MS. STADLER: Yes. As you can imagine, that issue was the subject of vigorous discussion. The reason for that revision in the revised version of the Order was primarily a concession that we can't put the horse back in the barn. Once someone has been retained, it's impossible to predisclose those things.

And so what we've tried to do is make clear to those professionals, and in most cases, the professionals themselves have paid the retained experts out of pocket. And so rather than indicating to them the entirety of the fee would be subject to disallowance for that reason, we wanted to provide a mechanism for those fees to still be considered under the reasonableness parameters that would normally apply, with the recognition that there was perhaps some initial disclosure or consent information that could have been provided, and that should have been provided and maybe can be provided even though the horse is out of the barn.

So we can work on that. I think that there will be additional expert retentions. Many professionals have talked to us, you know, about specific instances where, we're going to need to hire someone on this, this, this, this. Should we

let you know? When should we let you know? How should we -- do you need to approve it? That sort of thing.

And we can talk about that in connection with the next revision, but Your Honor has hit on a tricky issue for us and we will continue to work on that.

THE COURT: Thank you. It doesn't surprise me that it's sensitive, but I also think it's fair. And I hope it will be efficacious for the assembleds to know that it is something of which I'm concerned.

And I'd just like you to confirm that the issue raised as to the COFINA Agent's retention is something that is still being worked on and has been carved out of the --

MS. STADLER: Yes.

THE COURT: -- recommended approval?

MS. STADLER: Yes, it has.

THE COURT: All right. I think you'll all be happy to know that that takes me through the major structural concerns that I had in terms of the motion.

I'd just like to ask you, and I realize you need to speak to this very generally, but there is the potentially duplicative retention issue with respect to the COFINA Agent in particular. And so if you could give me a little bit of insight into how you are going about analyzing what's of concern, and what sorts of changes you might expect to see going forward, assuming that there's significant

COFINA-related work to be done going forward.

MS. STADLER: Right. Yes. Speaking generally, as Your Honor knows, the Order for the appointment of the COFINA Agent included provisions for her retention of counsel and explicitly provided for the retention of a lead counsel firm and a smaller firm that was designated as municipal counsel, which on its face makes sense.

Our process involves looking not just at the matters identified as matter codes or names in the fee application, but also the nature of the tasks provided. And our initial analysis noted that while the titles of the two different law firms were distinguishable, that the actual activity of the two law firms was less so. So that if there were a particular municipal law component to a specific issue or a specific motion, it was not clear from the time records. Municipal counsel is working on this issue. Lead counsel is working on this issue.

Instead, it began to look as if the lead counsel was vetting some of its work product with the municipal counsel. Municipal counsel was almost always running its work product through the lead counsel. And it was difficult to discern in the beginning the difference.

We flagged that issue. We kept an eye on it. We talked to the professional about it. We asked for more clarification. We asked them to be mindful of this concern

and try to be careful that there wasn't unnecessary duplication going on.

And as the fee periods have progressed, it's not something that the Fee Examiner feels has gone away. It continues to be an issue.

We're now at a very interesting point because, as Your Honor well knows, COFINA confirmation hearings are scheduled for January, and all of those professionals might be done working, on the best case scenario, by the end of January or mid February, or certainly in the first quarter of the year.

So we're trying to walk that fine line here between imposing standards of reasonableness, enforcing those standards to the extent enforcement is possible, but not stepping on the toes of professionals in terms of their professional judgment. And also, not stepping on the toes of clients who have, of course, the right to ask their lawyers to perform services for them, as they feel they need to, to carry out their own fiduciary obligations, et cetera.

So given the unique nature of that situation, I think what we've tried to do is reserve the Fee Examiner's rights to continue to look at and raise that issue.

I think the parties are on notice that if the COFINA plan is confirmed and they're all filing final fee applications in the next couple of months, this issue may well

be front and center in the discussion of how those final fee applications will be treated. And if I had to guess, I would say that the Fee Examiner will likely be seeking some additional adjustments to fees to address those concerns.

THE COURT: Thank you.

One final issue, which is the footnote regarding proposed gross-ups in the event that the Puerto Rico tax principles change. It may be very premature to spend a lot of time focusing on it now. It may not be necessary at the end of the day. But should the implementation of the tax happen, I would like to see some set of principles and uniform disclosure and presentation format for gross-up proposals.

And I recognize firms have people in different states and different tax jurisdictions, and it's unlikely that firm to firm the number would be precisely the same, but it ought to be as transparent and as easy as possible for the Fee Examiner and the Court to understand the principles that are behind requests, over and above even the withholding tax.

The rationale on the withholding tax is obvious. And I trust also, as the authorities of the Commonwealth consider tax -- you know, that tax, et al., they think about the transaction costs of money going in through the front door and coming out through another door and all of that. So maybe it will come to pass. Maybe it won't. But the gross-up component is yet another part that would be in that cycle,

but, you know, coming specifically before the Court. And I would like to have as much information and an analytical tool that has analytical integrity.

MS. STADLER: Right. I think Your Honor is correct.

There may be a prematurity element here. At the same time, we don't want to let the horse out of the barn on this. So we're trying to balance there.

And my understanding, and there are certainly people in this room that are much more qualified than I am to speak on this, but my understanding is the legislation passed and was signed by the Governor.

We've been unable to locate a copy of the Bill, a copy of the Act, or any legislative analysis that would indicate when it takes effect, et cetera, et cetera. So it could be relevant January 1st. It could have been relevant yesterday. It might not be relevant until next year. We really don't know.

The purpose of this footnote was to make clear to professionals that whatever the treatment of that issue ends up being in the area of billing and fees and fee applications, it needs to be kept separate from these other types of rate adjustments that we've been talking about.

We don't want professionals to uniformly raise every individual timekeeper's rate by 30 percent or 29 percent effective January 1st in an effort to get ahead of this issue,

because it would be impossible later to determine what was the 29, and what was the two, and what was the five, and what was the 12 and what was seniority based.

THE COURT: Yes.

MS. STADLER: So -- and I think we have consensus among the Oversight Board and the Fee Examiner that keeping the issue separate is really the best we can do at this point in providing guidance to the professionals. And what else happens as a result of that, as you said, we'll just have to see --

THE COURT: Yes.

MS. STADLER: -- how things unfold.

THE COURT: I had seen that the tax reform bill had been signed, but I didn't see specific reportage on this issue. And so honestly, it wasn't clear to me whether this had been included or not.

So I apologize for being a little bit behind the curve on that, but it sounds as though administrative guidance and clarity is still outstanding?

MS. STADLER: Definitely.

THE COURT: All right. Well, thank you for your attention to this, as to all other matters.

And so what I will do is enter an Order denying without prejudice the current motion, which is ECF 4370, in anticipation of a further revised set of proposed presumptions

and procedures that builds on this discussion today. And I also expect that professionals will be guided generally by this discussion today in proceeding with their work in the consideration of fee increases.

And I thank you all.

MS. STADLER: Thank you, Your Honor.

THE COURT: Thank you, Ms. Stadler.

MS. STADLER: Thank you.

THE COURT: Mr. Despins.

MR. DESPINS: Good morning, Your Honor.

THE COURT: Good morning.

MR. DESPINS: Luc Despins with Paul Hastings.

Very, very briefly, two comments. First, I want to say, I hope I won't live to regret this, but the Fee Examiner has an impossible job. I think they're doing a very good job, considering all the push and pulls that are involved in that process.

But I wanted to address one issue, which is the cost of living proposal that Your Honor suggested. And I want to make -- and I know this is not the hearing where this is going to be decided, but I just wanted to make sure the Court and the Fee Examiner have in mind, you know, not all professionals have the same contract or agreements.

Some agreed to the largest discount, 20 percent. Some were told by their partners they should have their heads

examined to have agreed to that. But that is beside the point. That has been agreed to. But that contract, that agreement, also has other features. And when we negotiate with a client, I've never given discounts in bankruptcy, but I know you always look at two things: One, what's the discount, and are you frozen at those rates.

And in our case, you know, the Order says that the rates can be increased, as they are increased for all clients, not just for this client, as you know, over time. And the fees have to be reasonable. There's no doubt about that. It's our burden. We understand that.

But the problem we have is that to have a two percent, one-size-fits-all, when some firms are giving a five percent discount, others 15, our firm, 20, is a difficult issue when, you know, this is not a new issue, meaning it was specifically provided that our fees could be increased, as they are increased for all other clients.

So I know this is not the time to argue that, but I just wanted to add that dimension to the discussion.

THE COURT: I do understand that it's serious. I do understand that it's complicated. These proceedings have -- could have been expected to be complicated, I think in some ways have been far more complicated and expensive across the board than they might have been in another scenario, probably less complicated than they could be, they could well be.

So I guess I would say two things: I hear what you are saying, and I take seriously the contextual issues and I trust that they will be discussed. I also hope and trust that professionals and their partners will take to heart and take seriously the comments that I've made today, and the rationale that I've offered for the comments that I've made today. And bear in mind that Orders that are not final can always be revisited by the Court.

And, you know, personally, I know what it's like to have, we'll just put it, way less control than I'd like to have in an ideal world over my own ability to budget and be on a fixed income in a life that has become exponentially more complex and demanding than I originally signed up for. So if that helps, I can feel your pain.

MR. DESPINS: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Williamson.

MR. WILLIAMSON: Actually, Your Honor, your last comment may be the most significant comment of the morning.

Good morning, Your Honor. Brady Williamson, Godfrey & Kahn, Fee Examiner.

In light of the extended discussion, I will be very, very brief. There is no shortage, from our perspective, of either data or discussion. And I simply want to add to the record that the data to which we have access is not limited to

this case. It encompasses several other major Chapter 11s, of which some of the parties and counsel in this room are involved.

So the purpose of making that point is to, in effect, reinforce what I think everyone has said this morning, which is one size does not fit all. So that with this massive data, we can provide data on virtually everything down to the individual staff member, the individual associate. The challenge is making judgments based on that data. And the Court's comments this morning, obviously, are very, very helpful.

I would simply end by saying that obviously professionals have a role. The Fee Examiner has a role. The Court has a role. But as a reminder, the clients have a role as well.

THE COURT: Yes.

MR. WILLIAMSON: And that is particularly true on rate increases, which is why we made it a component of the presumptive motion.

Your Honor, I don't know if the Court was going to treat the specific applications as a separate matter or not, but --

THE COURT: Well, it's the next matter.

MR. WILLIAMSON: Then I'll leave that to the Court and Ms. Stadler. Thank you.

THE COURT: Thank you.

So, Ms. Stadler.

MS. STADLER: Thank you, Judge. This one should be a little more straightforward.

As you know, in connection with the last Omnibus Hearing, we recommended a group of third interim fee applications for Court approval. That Order was entered in November.

There were several applications from the third interim fee period, and some from prior interim fee periods, that remained outstanding. There are various reasons for that. Some of them have to do with the data issue that Mr. Williamson was just discussing.

Most law firm billing software can generate the electronic data that we request very easily, but as Your Honor can imagine, many law firms have lots of different engagements. Many law firms have four different clients. There are contracts that govern certain parts of engagements and that don't govern others. And so for some professionals, providing data that matches their fee application has proven to be a challenge, and so that's caused some delays in some treatment.

In other words, it is just a function of the sheer volume, the number of the issues that have been identified and the time it takes to go through and meaningfully address each

and every one of them.

We hope that the professionals and the Court are cognizant of the interim compensation procedures which allow professionals to receive 90 percent of their requested fees on a monthly basis while this process plays out.

THE COURT: Yes.

MS. STADLER: And ultimately, we think that we'll reach the right result with all of these professionals, with the goal, of course, being not to have contested fee applications here.

THE COURT: Yes.

MS. STADLER: So the ones that are on the list for today don't fall into one of those categories. They merely required a little more time than those that were approved in November. I think they are straightforward.

As we noted in our colloquy a moment ago, there are a couple of issues that are carved out. Namely, the fees for the COFINA Agent's expert have been pulled out of this analysis entirely. We're going to treat that as a separate line item, and we're going to do a separate and independent reasonableness analysis of those fees, subject to further discussion of the disclosure issue that we talked about.

Other than that one issue, I think all of the applications we're recommending for approval today are fairly straightforward. Some of the professionals have accepted

fairly significant deductions to their fees in recognition of some of the issues we've been talking about today. But in the end, the Fee Examiner is satisfied that the applications he's recommending for approval today are reasonable under the PROMESA reasonableness standards which, of course, incorporate those in the Bankruptcy Code, and asks the Court to enter an Order approving those fees as noted on the exhibit to our report.

THE COURT: I've reviewed carefully the report, and the context that the Fee Examiner has provided today, and at earlier sessions, hearings, and in earlier reports. And I find that the proposed -- the fees proposed for approval on an interim basis are reasonable, and I will enter the Proposed Order in connection with docket entry number 4455.

MS. STADLER: Thank you, Judge.

THE COURT: Thank you.

And again, thank you to Mr. Williamson.

Thank you, Ms. Stadler.

And so the next item on the agenda is the Motion for Relief from the Automatic Stay of AMPR, which is ECF number 3914.

MR. BARRIOS: Good morning, Your Honor.

THE COURT: Good morning.

MR. BARRIOS: For the record, Attorney Jose Luis Barrios Ramos on behalf of Asociacion de Maestros de Puerto

Rico.

THE COURT: Good morning.

MR. ROSEN: Good morning, Your Honor. Brian Rosen from Proskauer Rose on behalf of the Oversight Board.

Your Honor, as Mr. Bienenstock mentioned before, there are a lot of discussions that are going on in connection with prospective plans of adjustment. And a lot of that involves negotiations, discussions among the Oversight Board, AAFAF, and obviously the movants in this situation, the AFT.

In light of those ongoing discussions, the parties have agreed that the consideration of the motion which is up, the Motion for Relief from Stay, would be adjourned until the next Omnibus Hearing, Your Honor, to January 30th, subject to the continuation of the automatic stay and the rights of the parties to agree to any further adjournment of the matter.

MR. BARRIOS: Yes, Your Honor. We have agreed to those terms, and we request the adjournment and the stay to be in place until the next Omnibus.

THE COURT: The requests are granted. Thank you. And thank you for continuing to work toward resolution.

MR. BARRIOS: Thank you, Your Honor.

MR. ROSEN: Thank you, Your Honor.

THE COURT: Thank you.

MR. ROSEN: Your Honor, the next item on the agenda is another Motion for Relief from Stay. I don't know --

THE COURT: The *Rivera Carrasquillo*, I had a message last night that I was being asked to take that under advisement and decide on the papers, and I will do that.

MR. ROSEN: That's my understanding as well, Your Honor.

THE COURT: And so the next motion would be COFINA's Motion to Authorize Rejection of the Lehman Debt Service Deposit Agreement, number 4374.

MR. ROSEN: Yes, Your Honor. And I hope the balance of the agenda goes as quickly as those last two matters.

Your Honor, interestingly, although this was -- it was our motion to seek to reject the DSDA, as it's referred to, there was a response that was filed by Lehman, but it was not a response in opposition. Rather, it was an acknowledgment, Your Honor, that the rejection was appropriate, could be done, but it included a reservation of rights that Lehman believes it may have with respect to the Trustee, who is the third party to that Debt Service Deposit Agreement.

We did file a response just merely to note that we did not think they had any claims, but if they did, those were separate claims that they could assert at any particular time in the future, and it was not really something that would come in in the context of this motion to reject the DSDA.

So with that being the case, Your Honor, and really

no formal opposition, we would ask the Court to grant the relief and to enter the Order that we submitted with our motion, Your Honor.

THE COURT: Well, I have thoroughly reviewed all of the submissions, and I've done so in the context of the requirements of Section 365. I find, based on COFINA's unrebutted proffers, that the rejection of the DSDA is a proper exercise of COFINA's business judgment. And so Lehman has its rights under Section 365(g) to file a claim for rejection damages, and under our procedures that proof of claim has to be filed by 35 calendar days out from entry of the Order.

I express no opinion regarding Lehman's purported reservation of rights as against the Trustee. And I will enter COFINA's proposed Form of Order, which is Exhibit A to docket entry 4374.

MR. ROSEN: Thank you very much, Your Honor.

THE COURT: Thank you.

MR. ROSEN: Your Honor, the next three items -- or two items. Excuse me.

THE COURT: Yes.

MR. ROSEN: Two items are COFINA confirmation related items. And if I could bundle them together, because I think it really does all go together. And there is another aspect of it that really is not mentioned there, but it's part of it,

which is the ongoing consideration of the motion that was filed pursuant to Bankruptcy Rule 9019 to approve the compromise and settlement.

So, Your Honor, if I could just give the Court a little bit of an update as to where we are on all of those matters, including the confirmation process.

THE COURT: I'd be grateful.

MR. ROSEN: Thank you, Your Honor.

And if I could take it in the order of the 9019 first, because I think it precedes it.

Your Honor, as you know, there were four objections that were filed to approval of the 9019 motion. One of those -- and the Oversight Board did file a Response in accordance with the date set by the Court. And so we believe that we've put before the Court now the objections and the responses.

One of those objections was filed by the Retiree Committee, and it also included a request for some documents to be produced, as well as certain interrogatories to be answered. We did respond, and we did have a meet and confer with respect to those discovery requests.

And the parties did come to an understanding with respect to the documents that would be provided. That was included in a Stipulation and a Protective Order that was submitted yesterday to the Court.

As part of those conversations, Your Honor, we also addressed the substance of the issues that were raised in the Retiree Committee's objection. And we -- as we noted in the Reply that was filed, we felt that virtually all, if not all, of those positions that were being espoused by the Retiree Committee had nothing really to do with the substance of the 9019 motions or the merits. But nevertheless, as part of these ongoing discussions that we're having with AFT, the Retiree Committee, towards a plan, we wanted to have a detailed discussion to try and resolve any of their ongoing concerns.

One of the issues that was raised by the Retiree Committee was a question regarding whether or not the new indebtedness, which is to be issued by COFINA pursuant to the COFINA Plan of Adjustment, as well as the possible indebtedness that might be issued for the benefit of the Commonwealth pursuant to the COFINA Plan of Adjustment would be included in the constitutional debt limit that is out there and that a lot of people have talked about several times over.

Your Honor, we, again, don't believe that that is the subject or should be the subject of a 9019 motion, but we engaged with the Retiree Committee on that basis. And what we did, the Oversight Board does have an opinion with respect to this indebtedness, and specifically, the indebtedness which may be issued for the benefit of the Commonwealth pursuant to

the COFINA Plan.

We believe it is something that is very important. We actually agree with the substance of the concerns of the Retiree Committee, but both parties agree, Your Honor, that it is something that should probably be taken up in the context of a -- excuse me, a Commonwealth Plan of Adjustment, rather than the 9019 motion and the COFINA Plan of Adjustment confirmation hearing.

So as a result of that and our commitment to have a further dialogue with respect to that issue, I am pleased to report that the Retiree Committee has agreed to withdraw its limited objection to the 9019 motion, leaving only those three remaining objections that were filed.

I don't know if there is anyone from the Retiree Committee in the courtroom here or there, but I was able to represent that they would be making that withdrawal, Your Honor.

THE COURT: Thank you.

MR. BENNAZAR ZEQUEIRA: Buenos dias.

THE COURT: Buenos dias.

MR. BENNAZAR ZEQUEIRA: Antonio Juan Bennazar Zequeira from the firm of Bennazar, Garcia & Milian, together with my partner, Hector Mayol. We are co-counsel to the Official Retiree Committee, together with the attorneys of Jenner & Block.

And what brother counsel Rosen has just stated is absolutely accurate. And these conversations will continue.

You probably understand very well why we are concerned. We have over 167,000 constituents whose pensions need to get paid, and we are concerned that the Commonwealth will have enough resources to do that. But the communications with the representatives of the Board are good. There's a lot of communication. There's a lot of telephone calls, conferences, meetings.

And we hope that this dialogue will eventually lead to a Plan of Adjustment of the Commonwealth that will provide for the pensioners of Puerto Rico. Thank you.

THE COURT: I am glad to hear this. I just have one technical question. Will you be filing a notice withdrawing the objection?

MR. BENNAZAR ZEQUEIRA: I understand it was filed last night, or it was about to, from our New York firm. Jenner was going to file that notice. I thought it had been filed.

THE COURT: I may have missed it. But as long as I can expect it will be filed, that means I don't have to compose an Order that says it was withdrawn. So thank you.

MR. BENNAZAR ZEQUEIRA: You're welcome.

MR. ROSEN: Thank you, sir.

Thank you, Your Honor.

I am not sure it was filed, but we will make sure that one will get filed if it has not been already.

THE COURT: Thank you.

MR. ROSEN: Your Honor, turning to the substance of the confirmation process, and also picking up on the dialogue that you had previously about the claims process, I just want to -- and the claims objection and who's handling what, I just want to report to the Court that through the dialogue that we have had with the administrative office in Washington on behalf of the Court and the Clerk of the Court several weeks ago, 16 Omnibus objections were filed. Most of them, if not all of them, pertaining to the approximately 3,500 claims that were filed in the COFINA case.

And I think, as I previously indicated, there were over 10 trillion dollars of claims filed in the COFINA case, when there is only 17 billion dollars worth of funded debt. So we knew that there might have been a little bit of fluff in those claims, and we've done our best.

And besides the Omnibus objections that have been interposed, Your Honor, we've done our best to clear the balance of the claims registered with respect to COFINA.

Three additional Omnibus objections are going to be filed today. The hearings on these are laid out in accordance with the discussions that we've had with the administrative office, and they won't have to be heard at all prior to the

confirmation hearing. We just wanted them on file.

Additionally, many Notices of Withdrawal of Claims are being filed by the respective claimants. We've reached out to all of those because one, they didn't want to be the subject of an objection, but two, they understood that the master proofs of claim that had been filed by Bank of New York covered the bonds themselves and there was no need for it.

Likewise, many claims have been filed by actually GO holders, who are people who held bonds against PBA, but they filed it to preserve their rights against COFINA. And they have voluntarily agreed to withdraw those claims as well. So I have --

THE COURT: And so are you tracking and reconciling that?

MR. ROSEN: Yes, we are, Your Honor.

And part of the Notices of Withdrawal that are being filed are also authorizing Prime Clerk to remove those from the claims registry as well. So hopefully we'll get down to the -- and we're also going to be filing some individual claims. Because of the Omnibus Procedures Order that was entered, they're not susceptible to an Omnibus objection, but again, we wanted to clear the docket up. They are not on for any time in the near future, but we wanted those on the record just to rid the claims registry of it.

In my world, Your Honor, I believe that there

probably should be ten claims or so in COFINA down from 3,500, but we will get close to it by the end of the day. So that's been a very positive process, and I appreciate all the efforts of not only the team of O'Neill Borges and Proskauer, but also all the creditors' counsel who have been working with us to enter those Notices of Withdrawal to clear up the docket.

THE COURT: I thank you all. And I also do thank you for working with our third branch representative out of the AO to coordinate our administration of our end of the process.

MR. ROSEN: We will be having more dialogue with that office, Your Honor, as we continue to develop the claims objections procedures on a more substantive basis.

We've already had initial conversation, but I think it will entail perhaps a trip to Washington to sit down with the office to really get into the substance of it.

THE COURT: That's very good news. Thank you.

MR. ROSEN: Your Honor, with respect to the confirmation process itself, the objection deadline is January 2nd, and to date, we have not received any objections.

We do understand, however, Your Honor, that you and the court might have been the recipient of a mail order campaign, with being flooded with letters. And we appreciate the Court posting those on the docket so we can see what is being said, but we also took note of the Court's entry of an Order which said those are not formal objections to the

confirmation process.

But we still want to hear what people are saying, and we want to try and address it, or at least in the context of the confirmation process, the hearing itself, be able to present to the Court enough information so that those people who have informally raised those concerns to you will be heard. And you'll understand the process that was gone through, and you'll be able to address that when addressing the confirmation process itself.

THE COURT: I am very glad to hear that. As you've seen, a lot of those raise social and economic concerns, but they are very real concerns in very real lives. And some of them also indicate, you know, possible lack of understanding of some of the mechanics of the issues that are before the Court in the confirmation proposal and in the 9019.

And so I do hope and trust that in your submissions and advocacy, you'll provide both a narrative and any necessary factual information and representations to be able to enable me to address it, enable the public to understand in an appropriate factual context what's being proposed.

It's not a situation in which everyone, everywhere in all of the constituencies of parties in interest will ever -- could rejoice together no matter what my ruling is on these motions, but it is very important for everyone to have an accessible information base and an understanding of what's

happened and why. And I appreciate your taking that up seriously.

MR. ROSEN: Thank you, Your Honor. We will do our best.

THE COURT: May I just say something --

MR. ROSEN: Sure.

THE COURT: -- in that connection? I am considering and think that it would be important, in addition to the specific objection filing procedures, which we've made clear and provided, in addition to my close attention to everything that comes in in my mailbox, and electronic and physical, to have an opportunity in connection with the 9019 motion and the plan confirmation for a designated segment of time for a limited number of members of the public, chosen at random from people who express a desire to speak, through a process that I'll devise and publicize, to be able to come to court and make brief remarks on the order of a five-minute limit.

And I'd like to find an hour or two in the course of the day. I realize that we will have a lot to get done if it's a one-day hearing, or even a day and a half hearing, but I want to notify you of that.

MR. ROSEN: Certainly.

THE COURT: And at some point before we adjourn today, I'd like to talk about what the agenda for those proceedings would look like and in what order different events

would need to take place, so that we can think very realistically, and I can think more realistically, about what needs to be arranged.

MR. ROSEN: Absolutely, Your Honor.

Just to let you know about the notice and the balloting process that is going on, pursuant to the solicitation procedures Order or the disclosure statement or whatever you want to call it, radio spots have been airing, notices have been published in newspapers, and the balloting has commenced.

We know that because we have been receiving some phone calls from beneficial holders about how do I actually do this, because they're nominees through DTC, and how things trickle down, they don't sometimes accurately explain it.

So we've been addressing all of those, and we're actually working with the balloting agent to perhaps put another thing out there through DTC to make it even in simpler English, more plain for them. But we are starting to see the balloting roll back, and so we are happy to report that.

Going to your comment about process, and this is consistent with the 9019 motion as well, we are in the process of putting together declarations in support for both the 9019 motion and for the confirmation process.

The time to respond to objections that are interposed with confirmation is January 9th, and so we are anticipating

filing those declarations in support on January 9th. And we would use those, Your Honor, as direct testimony in the context of confirmation to perhaps lighten the burden of the Court.

The only ballot that would not be filed at that time would be the ballot -- excuse me. The only declaration that would not be filed would be the declaration of the balloting agent, because the period closing -- it closes for elections and votes to accept the plan on January 8th. And it takes them a little bit of time, perhaps even up to a week, to finish the tabulation process.

So that declaration of balloting agent could be filed as late as the day before confirmation, but it clearly would be prior to the commencement of the confirmation hearing. And obviously, Your Honor, any of the declarants for those declarations would be available in the courtroom for cross-examination or any additional questions that the Court would have for either the 9019 motion or the confirmation hearing itself.

Your Honor, the only other point that I would -- I guess as part of that, Your Honor, and we'll get to this later on, would be where you would like to have that window of opportunity to be placed within the 9019 motion hearing or the confirmation hearing.

It would be my guess, Your Honor, that we would start

with the 9019 motion and then move to the confirmation process. And whenever you want to fit that window in there, we'll work with the Court's time frame.

THE COURT: Well, I think since we will be taking them up separately and there are, you know, different ways of -- concerns, that it would be appropriate to have a window within each.

MR. ROSEN: Okay.

THE COURT: A window within 9019 and then a window within COFINA. And in my solicitation of interests, I'll probably have -- we haven't figured out exactly how we'll put it up, but it may be a registration thing. But as a tick box, do you want to talk about the Commonwealth-COFINA or do you want to talk about issues within the COFINA Plan?

It seems to me that it would be most appropriate to have that follow the principal presentations of counsel since you do anticipate being able to speak to some of the themes of concerns, and then to have it follow principal presentations and then itself be followed by the reply presentations.

MR. ROSEN: That's fine, Your Honor. We will do that.

Your Honor, we are trying to put together, in a detailed form, the letters that you've been receiving. And would it be helpful for you to -- for us to present you with some sort of chart that would lay it all out?

THE COURT: That would be quite helpful. Thank you.

MR. ROSEN: We'll do that, Your Honor.

THE COURT: I have been reading them as they come along, but I haven't charted them out. So it would be good to have a chart and record.

MR. ROSEN: And we'll try to separate them by themes.

THE COURT: Thank you.

MR. ROSEN: Your Honor, the one other note that I would make is that consistent with what I said before about people working together, we have been collaborating with the O'Melveny firm on behalf of AAFAF and all of the creditors in connection with the preparation of documents for the plan supplement. And I am happy to report that that is well on its way.

And people know that there is a limited time to finish those documents, and to the extent that it's going to interfere with their holiday plans, so be it. But it will be filed by the end of the year, which is the time frame associated in the Solicitation Procedures Order.

THE COURT: Excellent.

MR. ROSEN: Your Honor, that leaves to be discussed, about the confirmation hearing, the urgent motion that we filed with respect to Section 19.5 of the plan. And as the

Court is aware, there is an outstanding issue with respect to two pieces of litigation that were commenced against the Bank of New York Mellon, one by Whitebox Advisors and the other by Ambac Insurance.

And the plan provides for a mechanism so that those litigations could continue if the parties so desire, but not have it in any way impact the distributions that would otherwise be made to any of the holders of COFINA bonds, either senior or subordinated.

And the reason for that, Your Honor, is the Bank of New York Mellon would like to assert that it has a charging lien and, therefore, any of the fees and expenses that might be incurred in connection with those litigations on a going forward basis, they would need to reserve against, and thereby taking it out of all of the other parties' distributions to be made pursuant to the COFINA plan.

But as part of the negotiation process, we were able to get the parties to agree, and specifically the Bank of New York Mellon to agree, that it would not do that, but instead it would be focusing on Ambac and Whitebox as the plaintiffs in those actions and any distributions that might otherwise be made to them.

As part of the ongoing dialogue and with the benefit of Judge Houser as the mediation team leader, we were able to come up with a mechanism for those matters to be heard in the

context of the confirmation hearing. So that if the Court determines to confirm the plan, we can go forward right away with the effectiveness of the plan and have the concerns of Bank of New York Mellon with respect to those two litigations reserved or at least taken into account by the money either being in cash set aside or by a bond being posted by Ambac and Whitebox.

And there is a disagreement between those three parties as to which is the proper form of currency, but that is something that will be left to the Court to determine.

Specifically, Your Honor, pursuant to the urgent motion, the parties have agreed that there will be dual submissions and they will be done at the same time. On January 2nd, which is the objection deadline to confirmation, Bank of New York Mellon would submit information concerning what amount of fees and expenses it is anticipating to incur in connection with the two subject litigations. And -- excuse me, and Whitebox and Ambac would file briefs or declarations supporting their position that no amounts are required to be posted or withheld from their distributions.

And then on January 9th, which is the response deadline for the Oversight Board to respond to otherwise -- objections to confirmation, there would be a similar deadline for those parties to make filings.

Specifically, Your Honor, Ambac and Whitebox would

have to submit counter designations or counter declarations to the amount that Bank of New York Mellon believes it will incur. And Bank of New York Mellon would have to submit to the Court a brief in opposition or counter to the position taken by Ambac and Whitebox as to the entitlement of any amount to be posted or otherwise withheld.

There is a period of the 10th to the 15th where the parties could take depositions of the other parties, and then this Court would then hear, at the confirmation hearing, the issue first as to the entitlement. And if it makes a determination there would be an entitlement, as to what amount should be posted or otherwise tendered in cash to preserve the rights of the respective parties.

THE COURT: And so you are anticipating a bench ruling on the entitlement issue, then to be followed immediately by any necessary evidentiary proceedings?

MR. ROSEN: Yes, Your Honor. And that's why the goal was to actually have all of the evidence before you prior to the hearing so that it really did not take up much of your time on the 16th to hear anything really, other than what additional argument you may want with respect to the entitlement issue, because both parties would have already said their pros and cons as to the amount and the form of any posting that would occur.

THE COURT: And I'll have obviously the necessary

portions of the indenture and whatever other contractual documents the parties are relying on for their legal positions on entitlement?

MR. ROSEN: Exactly, Your Honor. They will include that in their submissions.

So, Your Honor, if the Court would think -- and I don't want to -- I see somebody's already maybe getting close to the lectern over there in New York. We would submit, Your Honor, that the process that was developed by the mediation team leader and agreed to by the parties is the right process to go by.

And if the Court would agree, we would ask the Court to enter the Order then with respect to that process, which was attached as an exhibit to the Urgent Motion that was filed.

THE COURT: Thank you.

I guess we'll find out who's in New York who wishes to be heard.

Good morning.

MR. SIZEMORE: Yes. Good morning, Your Honor. My name is Luke Sizemore from Reed Smith on behalf of the Bank of New York Mellon.

First, I want to say that I appreciate all of the work that the Oversight Board has done to work with Whitebox, Ambac and Bank of New York Mellon, to work through these

issues. And I generally concur with everything Mr. Rosen said except one clarification that I'd like to make.

I believe Mr. Rosen said there's an agreement on 19.5. We are working toward an agreement and we hope those discussions continue. We're optimistic that those discussions would result in no objections to the plan, but conversations are ongoing.

And the Proposed Order that the Court has in front of it does include an express reservation of rights, I think with respect to each of Bank of New York Mellon, Whitebox and Ambac as to objections to confirmation of the plan, including with respect to 19.5. But again, Your Honor, we're hoping to work through those issues so that it is not an issue at confirmation.

THE COURT: Thank you for that clarification, but you -- Bank of New York Mellon continues to join in the application for my approval of this procedure for litigating the charging lien holdback issues in connection with 19.5?

MR. SIZEMORE: Yes, Your Honor. We support the procedure.

THE COURT: Thank you.

MR. ROSEN: Your Honor, I apologize. Mr. Sizemore is correct. Bank of New York Mellon continues to discuss certain issues with the Oversight Board.

They have provided us informally with some additional

comments to the plan of adjustment that they've asked us to consider, none of which obviously would require resolicitation because they are just technical in nature and go to the relationship of the Trustee itself to COFINA and the way to resolve certain outstanding issues.

THE COURT: Thank you for the additional clarification.

And so, Mr. Sizemore, were there any further remarks that you wish to make?

MR. SIZEMORE: No, Your Honor. Thank you for your time.

THE COURT: Thank you.

The Urgent Motion is granted, and I will enter the Proposed Order in connection with that motion, which is docket entry 4457 in case 3283.

MR. ROSEN: Thank you very much, Your Honor. I believe that may conclude this morning's agenda.

THE COURT: It looks like there is no one else queued up to be heard, and so I think our agenda is indeed concluded.

And so the next scheduled hearing date is the January 16, 2019, hearing on the COFINA Plan and the 9019 motion, as well as the Bank of New York Mellon 19.5 related motion that will take place here in San Juan with a video connection to New York.

I would like to thank the court staff in Puerto Rico,

Boston and New York for their work in preparing for and conducting today's hearing, and their superb ongoing support of the administration of these very complex cases.

Keep well, everyone, and happy holidays and safe travel to all.

MR. ROSEN: Same to you, Your Honor. Thank you.

(At 11:13 AM, proceedings concluded.)

* * *

U.S. DISTRICT COURT)

DISTRICT OF PUERTO RICO)

I certify that this transcript consisting of 65 pages is a true and accurate transcription to the best of my ability of the proceedings in this case before the Honorable United States District Court Judge Laura Taylor Swain on December 19, 2018.

S/ Amy Walker

Amy Walker, CSR 3799

Official Court Reporter